

Decision Notice



Decision 134/2013 Allied Vehicles Limited and Glasgow City Council

Whether requests were repeated

Reference No: 201300920
Decision Date: 10 July 2013

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Rosemary Agnew
Scottish Information Commissioner

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Summary

Between 6 and 23 July 2012, Allied Vehicles Limited (Allied Vehicles) submitted 24 separate requests to Glasgow City Council (the Council) for (a) correspondence about electrically propelled vehicles and (b) correspondence mentioning Allied Vehicles, for each month between January 2010 and December 2011. The Council applied exemptions and withheld the information. After a review, the Council concluded that the 24 requests were repeated requests.

Following an investigation, the Commissioner found that the Council had been entitled to refuse to comply with the 24 requests on the basis that they were repeated. However, it had failed to comply with the prescribed timescales for response.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement) 10(1)(a) (Time for compliance); 21(1) and (4) (Review by Scottish public authority) and 14(2) (Vexatious or repeated requests)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Background

1. Between 6 July and 23 July 2012, Allied Vehicles submitted 24 separate requests (one for each month between January 2010 and December 2011) for:
 - a. All information contained within correspondence sent by, or received by, four named employees of the Council, in any format, including correspondence in the case of email received in the form of carbon copy or blind carbon copy from other correspondents, where that correspondence refers to electric or electrically propelled vehicles.
 - b. All information contained in any documents held by the Council where those documents include a reference to Allied Vehicles and recorded in the relevant month.

These requests are referred to as the “New Requests” in this decision.



2. On 3 August 2012, the Council responded separately to all but one of the New Requests (the exception being the request seeking information for March 2011). The Council stated that the information was exempt from disclosure under sections 30 (Prejudice to conduct of public affairs) and 36(1) (Confidentiality) of FOISA.
3. On 12 September 2012, Allied Vehicles requested reviews of all 24 New Requests, including a review of the Council's failure to respond to the request covering March 2011.
4. The Council notified Allied Vehicles of the outcome of its review on 15 October 2012. The Council provided separate responses to all 24 review requests, and informed Allied Vehicles that it now considered the New Requests to be "repeated requests", in line with section 14(2) of FOISA.
5. On 11 April 2013, Allied Vehicles wrote to the Commissioner, stating that it was dissatisfied with the outcome of the Council's reviews and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Allied Vehicles had made 24 separate requests for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to the 24 requests. The case was then allocated to an investigating officer.

Investigation

7. On 15 May 2013, the Council was notified in writing that an application had been received from Allied Vehicles and was asked to provide comments on the application (as required by section 49(3)(a) of FOISA). The Council was also asked to respond to specific questions and, in particular, was asked to justify its reliance on section 14(2) of FOISA.
8. The Council responded on 7 June 2013, providing its submissions as to why it considered Allied Vehicles' 24 New Requests were repeated requests.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to her by both Allied Vehicles and the Council. She is satisfied that no matter of relevance has been overlooked.



Council's change of response following review

10. Allied Vehicles commented in their application that the Council had withheld information under sections 30 and 36(1) of FOISA (except in relation to the request covering the month of March 2011).
11. In the Council's review decisions, it is clear that the Council had substituted a different decision in relation to each request, namely that each request was a "repeated request for information" and, under section 14(2) of FOISA, the Council was not obliged to comply with repeated requests.
12. Section 21(4) sets out what an authority may do when it conducts a review. The authority can:
 - (a) confirm a decision complained of, with or without such modifications as it considers appropriate;
 - (b) substitute for any such decision a different decision; or
 - (c) reach a decision, where the complaint is that no decision had been reached.
13. In this case, the Council substituted a different decision from that originally made, which it was entitled to do in line with section 21(4)(b) of FOISA. The Commissioner will not comment further on this matter and will go on to consider whether the New Requests were repeated requests, in line with section 14(2) of FOISA.

Section 14(2) – repeated requests

14. Section 14(2) of FOISA states:

"Where a Scottish public authority has complied with a request from a person for information, it is not obliged to comply with a subsequent request from that person which is identical or substantially similar unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request."
15. The Council took the view that, in the New Requests, Allied Vehicles had asked for the same information as in a previous request (referred to here as the "original request"), made on 9 March 2012.
16. When considering section 14(2) of FOISA, the following points need to be considered:
 - whether the Council had complied with Allied Vehicles' request dated 9 March 2012;
 - whether the New Requests (dated between 6 and 23 July 2012) were identical or substantially similar to the original request (dated 9 March 2012); and
 - if so, whether there had been a reasonable time between the submission of the original request and the submission of the New Requests.



Compliance with the original request

17. On 9 March 2012, Allied Vehicles wrote to the Council requesting the following information recorded since 1 January 2010:
 - (a) All information contained within correspondence in any format sent by, or received by, four named employees, including correspondence in the case of email received in the form of carbon copy or blind carbon copy from other correspondents, where that correspondence refers to electric or electrically propelled vehicles.
 - (b) All information contained in any documents held by the Council where those documents include a reference to Allied Vehicles.
18. The Council responded on 5 April 2012, refusing to provide the information on the grounds that it was exempt from disclosure under sections 30 (Prejudice to conduct of public affairs) and 36(1) (Confidentiality) of FOISA.
19. On 12 April 2012, Allied Vehicles wrote to the Council requesting a review of its decision.
20. The Council notified Allied Vehicles of the outcome of its review on 11 May 2012. The Council advised that, after review, it had concluded that the cost of complying with the request would exceed the upper limit of £600 allowed by section 12(1) of FOISA.
21. Allied Vehicles appealed to the Commissioner on 18 May 2012, following which the Commissioner issued *Decision 169/2012 Allied Vehicles Limited and Glasgow City Council*¹ which concluded that excessive costs would not apply to part (a) of the request and ordered the Council to issue a different response. The Commissioner accepted the Council's reliance on section 12 in relation to part (b) of the request, but ordered the Council to provide advice and assistance to Allied Vehicles to help it to narrow the scope of its request. The Council complied with the Commissioner's decision by 6 December 2012.
22. Having considered the facts above, the Commissioner is satisfied that the Council has now complied with Allied Vehicles' original request in line with the requirements laid down in FOISA.
23. In its application, Allied Vehicles commented that it was unclear if the Council was continuing to apply the exemption in sections 30 and 36(1) of FOISA. As the Council has stated that it considers the New Requests to be repeated, it is not required to inform the applicant whether information falls under any of the exemptions in Part 2 of FOISA, unless the Commissioner concludes that the request was not repeated.
24. Allied Vehicles also commented in its application that the Council should have provided guidance on how, in terms of the information held, the scope of the original request could be narrowed to bring the cost compliance below £600. The Commissioner notes that the Council provided such advice to Allied Vehicles after being required to do so in Decision 169/2012.

¹ <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2012/201201002.aspx>



25. Since the Commissioner is satisfied that the Council complied with Allied Vehicles' first request, she will now go on to consider whether the subsequent requests (the New Requests) were identical or substantially similar to the original request.

Were the New Requests identical or substantially similar to the original request?

26. In its submissions, the Council stated that the New Requests sought exactly the same information as the original request, albeit each request covered a shorter period.
27. The Council commented that in *Decision 037/2008 Mr David Walker and Falkirk Council* the Commissioner held that it was "reasonable for the Council to conclude that the request was substantially similar" when an applicant sought information which fell "wholly within the scope of the earlier request".
28. The Council considered that each of the New Requests fell "wholly within the scope" of the original request and that, in its correspondence, Allied Vehicles themselves had acknowledged that the terms of the New Requests were "similar". When the requests were conjoined, the Council found that Allied Vehicles had sought exactly the same information as had been covered by the original request.
29. In its application to the Commissioner, Allied Vehicles commented that the New Requests were not repeated as each request was a stand-alone request not previously made, sent on a different date and requesting a distinct set of information.
30. Having carefully considered Allied Vehicles' requests, the Commissioner notes that in making the New Requests, Allied Vehicles limited the scope of each request to one individual month, and submitted the 24 requests separately. However, even though the requests were made separately and do not overlap, it cannot be denied that, taken together, the New Requests seek exactly the same information as was requested in the original request.
31. The Commissioner considers that, in view of this, it was reasonable for the Council to conclude that the New Requests of 6 to 13 July 2012 were substantially similar to the original request of 9 March 2012.

Had a reasonable period of time passed?

20. The Commissioner notes that there is no attempt to define "a reasonable period of time" in FOISA, and takes the view that what is reasonable will depend on the circumstances of the case. In relation to section 14(2), consideration should be given to two questions which will help to assess whether a reasonable period of time has elapsed. These are:
- Has the information changed?
 - Have the circumstances changed?



21. In its application, Allied Vehicles argued that the Council had given no consideration whatsoever to whether the circumstances had changed since its decision on the original request, or whether the passage of time might have affected whether the public interest lies in withholding or disclosing the information.
22. In its submissions, the Council stated that both the original request and the New Requests related to historical information, which remained unchanged.
23. The Council also considered that there had been no change in circumstances at the time when the New Requests were made. Although the original request had been the subject of an ongoing application to the Commissioner, and Allied Vehicles were dissatisfied with the Council's responses to date [i.e. at the time when the New Requests were submitted], no decision had been issued to indicate that the Council had failed to comply with the terms of FOISA in responding to the original request, and the Council took the view that it was therefore entitled to consider that it had complied with the original request.
24. Accordingly, the Council believed that a "reasonable period" of time had not elapsed between the submission of the original request and the New Requests.
25. While there is no definition of "a reasonable period of time" for these purposes, the Commissioner is satisfied that that the information requested in this case was historical information and would remain unchanged no matter when a new request was submitted. The Commissioner has found no evidence to suggest that any change in circumstances had taken place which would lend support to Allied Vehicles' view that a reasonable period had elapsed between making the original request and the New Requests.
26. In the circumstances, therefore, the Commissioner considers that the Council correctly applied the terms of section 14(2) of FOISA to Allied Vehicles' request.
27. Allied Vehicles commented in its application that the Council should consider whether the public interest lay in withholding or disclosing the information. Section 14(2) of FOISA is not subject to the public interest test in section 2(1)(b) of FOISA, so the Commissioner accepts that the Council was not required to consider this matter when issuing its decision.

Failure to respond within statutory timescales

28. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days after receipt of the request to comply with a request for information, subject to certain exceptions which are not relevant in this case.
29. Given that the Council did not respond to Allied Vehicles' request of 17 July 2012 for information pertaining to the month of March 2011, the Commissioner finds that the Council failed to respond to that request within the 20 working days allowed by section 10(1) of FOISA.
30. Section 21(1) of FOISA gives public authorities a maximum of 20 working days after receipt of the requirement to comply with a requirement for a review, again subject to exceptions which are not relevant to this case.



31. As the Council did not respond to Allied Vehicles' 24 requirements for review of 12 September 2012 within 20 working days, the Commissioner finds that the Council failed to comply with section 21(1) of FOISA.
32. Given that the Council responded to the requirements for review on 15 October 2012, the Commissioner does not require the Council to take any action in relation to these failures in this particular case.

DECISION

The Commissioner finds that Glasgow City Council (the Council) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information requests made by Allied Vehicles Limited (Allied Vehicles).

The Commissioner finds that with the Council was entitled to rely on section 14(2) of FOISA and was not obliged to comply with the requests.

However, by failing to comply with the statutory timescales laid down in sections 10(1) and 21(1) of FOISA, the Council failed to comply with Part 1.

The Commissioner does not require the Council to take any further action in respect of these failures.

Appeal

Should either Allied Vehicles Limited or Glasgow City Council wish to appeal against this decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

Margaret Keyse
Head of Enforcement
10 July 2013



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-

- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or

...

14 Vexatious or repeated requests

...

- (2) Where a Scottish public authority has complied with a request from a person for information, it is not obliged to comply with a subsequent request from that person which is identical or substantially similar unless there has been a reasonable period of time between the making of the request complied with and the making of the subsequent request.

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

...



- (4) The authority may, as respects the request for information to which the requirement relates-
- (a) confirm a decision complained of, with or without such modifications as it considers appropriate;
 - (b) substitute for any such decision a different decision; or
 - (c) reach a decision, where the complaint is that no decision had been reached.

...